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Before the
Federal Communications Commission
Washington, D.C. 20554

MM Docket No. 95-83

In the Matter of

Amendment of Section 73.202(b), RM-8634
Table of Allotments,
FM Broadcast Stations.
(Littlefield, Wolfforth and
Tahoka, Texas)

REQUEST FOR SUPPLEMENTAL INFORMATION

Adopted: May 8, 1996;

Released: May 17, 1996

Comment Date: July 8, 1996

By the Chief, Allocations Branch:

1. The Commission adopted a *Notice of Proposed Rule Making*, 10 FCC Rcd 6598 (1995), in response to a petition filed by 21st Century Radio Ventures, Inc. ("petitioner"), permittee of Station KAIQ(FM), Channel 238C3, Littlefield, Texas, proposing the reallocation of Channel 238C3 from Littlefield to Wolfforth, Texas, and the modification of Station KAIQ(FM)'s construction permit to specify Wolfforth as its community of license. In order to accommodate this reallocation, the *Notice* also proposed either the deletion or substitution of the Channel 237A allotment at Tahoka, Texas.

2. As stated in the *Notice*, the petitioner seeks modification of Station KAIQ(FM)'s construction permit pursuant to the provisions of Section 1.420(i) of the Commission's Rules, which permits the modification of a station's authorization to specify a new community of license without affording other interested parties an opportunity to file competing expressions of interest.¹ Petitioner contends that adoption of its proposal will result in a preferential arrangement of allotments by bringing a first local aural transmission service to Wolfforth, while Littlefield will retain service from Station KZZN(AM). Petitioner states that Wolfforth is an incorporated community that is governed independently by a Mayor and five council members. Furthermore, petitioner notes that reallocation will result in a dramatic increase in service to populated areas, with service increasing from 35,241 to 252,733 persons.

3. Based on the information before us, we are unable to determine whether petitioner's proposal would result in a preferential arrangement of allotments pursuant to the Commission's goal in adopting the change of community of license rule. See *Modification of FM and TV Authoriza-*

tions to Specify a New Community of License (Memorandum Opinion and Order) ("Community of License"), 5 FCC Rcd 7094 (1990). In *Community of License*, the Commission stated that it would not blindly apply the first local service preference of the FM allotment priorities² when a station seeks to reallocate a channel from a rural community to suburban community of a nearby urban area. As a result, the Commission has required stations that have sought to reallocate their channels and to modify their authorizations from rural communities to suburban communities within Urbanized Areas to make a showing that the suburban community warrants a first local service preference. Subsequently, we have reexamined our policy regarding reallocation proposals where a station seeks to reallocate its channel and modify its authorization from a rural community to another community that is located closer to but outside of an Urbanized Area. See *Headland, Alabama and Chauahoochee, Florida*, 10 FCC Rcd 10352 (1995). Consequently, we determined that stations seeking to move from rural communities to suburban communities located outside but proximate to Urbanized Areas must make the same showing that is currently required of stations seeking to move into Urbanized Areas if they would place a city-grade (70dBu) signal over 50% or more of the Urbanized Area. In this case, our engineering analysis indicates that Wolfforth (population of 1,941 persons) is about eight kilometers from the edge of the Lubbock Urbanized Area (population 187,906 person)³ and the reallocated channel will provide a 70 dBu signal to half of the Urbanized Area. Based on our engineering finding of the city-grade coverage of this allotment, we request that petitioner submit information sufficient to show that Wolfforth is deserving of a first local service preference using the Commission's three factors enumerated in *RKO General (KFRC)*, 5 FCC Rcd 3222 (1990), and *Faye and Richard Tuck*, 3 FCC Rcd 5374 (1988). The Request for Supplemental Information does not afford any parties an opportunity to file counterproposals.

4. Interested parties may file comments on or before **July 8, 1996**. Comments should be filed with the Secretary, Federal Communications Commission, Washington, D.C. 20554. Additionally, a copy of such comments should be served on the petitioner, or its counsel or consultant, as follows:

James L. Primm
21st Century Radio Ventures, Inc.
713 Broadway
Santa Monica, California 90401
(Petitioner)

5. The Commission has determined that the relevant provisions of the Regulatory Flexibility Act of 1980 do not apply to rule making proceedings to amend the FM Table of Allotments, Section 73.202(b) of the Commission's Rules. See *Certification That Sections 603 and 604 of the*

¹ The coordinates for Channel 238C3 at Wolfforth are 33-25-48 and 102-03-35.

² The allotment priorities are: (1) first full-time aural service; (2) second full-time aural service; (3) first local service; and (4)

other public interest matters [Co-equal weight given to priorities (2) and (3)]. See *Revision of FM Assignment Policies and Procedures*, 90 FCC 2d 88, 92 (1982).

³ All population figures are taken from the 1990 U.S. Census.

Regulatory Flexibility Act Do Not Apply to Rule Making to Amend Sections 73.202(b), 73.504 and 73.606(b) of the Commission's Rules, 46 FR 11549, February 9, 1981.

6. For further information concerning this proceeding, contact Pam Blumenthal, Mass Media Bureau, (202) 418-2180. For purposes of this restricted notice and comment rule making proceeding, members of the public are advised that no *ex parte* presentations are permitted from the time the Commission adopts a Notice of Proposed Rule Making until the proceeding has been decided and such decision is no longer subject to reconsideration by the Commission or review by any court. An *ex parte* presentation is not prohibited if specifically requested by the Commission or staff for the clarification or adduction of evidence or resolution of issues in the proceeding. However, any new written information elicited from such a request or a summary of any new oral information shall be served by the person making the presentation upon the other parties to the proceeding unless the Commission specifically waives this service requirement. Any comment which has not been served on the petitioner constitutes an *ex parte* presentation and shall not be considered in the proceeding. Any reply comment which has not been served on the person(s) who filed the comment, to which the reply is directed, constitutes an *ex parte* presentation and shall not be considered in the proceeding.

FEDERAL COMMUNICATIONS COMMISSION

John A. Karousos
Chief, Allocations Branch
Policy and Rules Division
Mass Media Bureau